



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

FEB 15 2017

**Certified Mail No.: 7016 1370 0000 2235 0520**

**Return Receipt Requested**

Mr. Patrick Samson  
Community Fuels Inc.  
809-C Snedeker Ave.  
Stockton, CA 95203

Re: Community Fuels Biodiesel Production Facility  
Port of Stockton, California

Dear Mr. Samson:

The United States Environmental Protection Agency ("EPA") is preparing to bring an administrative enforcement action against Community Fuels, Inc. ("Community Fuels") for violations of Section 311 of the Clean Water Act ("CWA"), 42 U.S.C. § 1321. The violations occurred at the Community Fuels Biodiesel manufacturing plant in Stockton, California ("Facility"). This letter serves as a notice of EPA's intent to file a Complaint, Compliance Order and Notice of Right to Request a Hearing ("Complaint") against Community Fuels for violations of the CWA.

On September 21, 2016, EPA inspected the Facility. This inspection was performed pursuant to EPA's authority under Section 311(m)(2) of the CWA, 33 U.S.C. § 1321(m)(2), to assess compliance with the Spill Prevention, Control and Countermeasure ("SPCC") and Facility Response Plan ("FRP") requirements in Section 311 of the CWA, 42 U.S.C. § 1321(m), and in Title 40 of the Code of Regulations, Part 112 ("SPCC Rule"). EPA's investigation identified noncompliance with the CWA. Specific violations of the SPCC and FRP requirements include the following:

- failure to amend and recertify the SPCC plan not later than six months following a change in the facility design, construction, operation or maintenance that materially affects the potential for discharge (i.e., the addition of the three 250,000-gallon biodiesel storage tanks in July 2015), between January 2016 and January 2017, in violation of 40 C.F.R. § 112.5;
- failure to maintain and implement an SPCC plan that includes appropriate containment and or diversionary structures or equipment to prevent a discharge, no discussion of the Facility's drainage control systems, general containment requirements, and use of the

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inflatable ball-valve systems to plug drainage piping, (also, the ball-valves observed in use at certain locations may not adequately control drainage under increased hydraulic pressure), between January 2012 and January 2017, in violation of 40 C.F.R. § 112.7(c);

- failure to maintain an SPCC plan that includes secondary containment, prevention of premature vehicle departure and inspection of lower-most drains/outlets on trucks for the truck loading/unloading rack, between January 2012 and January 2017, in violation of 40 C.F.R. § 112.7(h);
- failure to maintain and implement an SPCC plan that provides adequate detail on applicable Tank Integrity testing program and inspector qualifications according to applicable industry standards from January 2012 to January 2017, in violation of 40 C.F.R. § 112.12(c)(6);
- failure to maintain and implement an SPCC plan that describes fail-safe engineering controls to prevent overfilling of containers and associated testing and maintenance of such controls to check liquid levels, between January 2012 and January 2017 in violation of 40 C.F.R. § 112.12(c)(8);
- failing to position or locate mobile or portable oil storage containers within adequate sized secondary containment systems, including the drums and totes of diesel, to prevent a discharge from escaping the facility, from January 2012 to January 2017, in violation of 40 C.F.R. § 112.8(c)(11); and
- failure to develop and implement an FRP following the installation and start-up of three 250,000-gallon biodiesel storage tanks that resulted in the Facility's total storage capacity to be greater than 1,000,000 gallons from July 2015 through the present, in violation of 40 C.F.R. § 112.20.



EPA anticipates filing a Complaint against Community Fuels unless Community Fuels advises EPA of substantial reasons not to proceed. EPA is extending to you this opportunity to advise EPA of any further information that EPA should consider before filing an action for violations of the CWA. Relevant information may include any evidence of reliance on compliance assistance, additional compliance tasks Community Fuels performed subsequent to the inspection, or financial factors bearing on Community Fuels' ability to pay a civil penalty. EPA is aware of information provided by you detailing some of the compliance actions taken at the Facility, including the work done with Condor Earth to begin the process of amending the SPCC Plan on October 20, 2016, the submittal of an amended SPCC plan on November 22, 2016 and again on January 6, 2017. Any relevant information that Community Fuels elects to submit should be sent by certified mail, return receipt requested or by email to:

Mr. Pete Reich  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street (ENF-3-2)  
San Francisco, CA 94105  
[Reich.peter@epa.gov](mailto:Reich.peter@epa.gov)

Please send a copy of your response to:

Ms. Rebekah Reynolds  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street (ORC-3-4)  
San Francisco, CA 94105  
[Reynolds.rebekah@epa.gov](mailto:Reynolds.rebekah@epa.gov)

Any penalty proposed for violations of the CWA and its implementing regulations will be calculated pursuant to EPA's "Penalty Policy for Sections 311(b) and (J) of the Clean Water Act" (the "Penalty Policy").<sup>1</sup> Also, civil penalties may be mitigated, under EPA's "Supplemental Environmental Projects Policy 2015 Update" ("SEP Policy"),<sup>2</sup> which describes the terms under which a commitment to perform an environmental project may mitigate, in part, an EPA civil penalty.

Even if you are unaware of any mitigating or exculpatory factors, EPA encourages Community Fuels to explore the possibility of settlement. If you are interested in commencing settlement negotiations, please contact Pete Reich of my staff at (415) 972-3052 or Rebekah Reynolds in the Office of Regional Counsel at (415) 972-3916, no later than thirty (30) days of receipt of this letter to schedule a meeting or conference call.

In addition, with this letter and its enclosure ("Information Request"), EPA seeks additional information and documents concerning Community Fuels' compliance with the SPCC and FRP Rule requirements. This Information Request is authorized pursuant to Sections 308

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<sup>1</sup> <http://www.epa.gov/sites/production/files/documents/311pen.pdf>

<sup>2</sup> <http://www.epa.gov/compliance/resources/policies/civil/seps/fnl-sup-hermn-mem.pdf> and  
<http://www2.epa.gov/enforcement/supplemental-environmental-projects-seps>

and 311 of the CWA, 33 U.S.C. §§ 1318 and 1321. Your responses to this Information Request must be made by a letter, signed by a person or persons duly authorized to represent Community Fuels. Please send your responses via certified mail, return receipt requested, or email, so that they are received within thirty (30) days of your receipt of this letter. Address your submittal to Mr. Pete Reich at the address specified above.

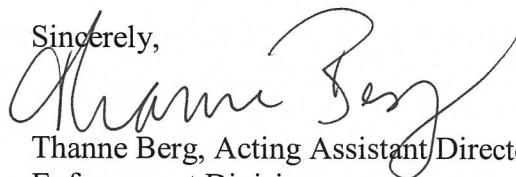
Please note that, pursuant to regulations located at 40 C.F.R. Part 2, Subpart B, you are entitled to assert a business confidentiality claim covering any part of the submitted information as defined in 40 C.F.R. § 2.201(c). Asserting a business confidentiality claim does not relieve you from the obligation to fully respond to this letter. Failure to assert such a claim makes the submitted information subject to public disclosure upon request and without further notice to you, pursuant to the Freedom of Information Act, 5 U.S.C. § 552. Information subject to a business confidentiality claim may be available to the public only to the extent set forth in the above-cited regulation. EPA has the authority to use the information requested herein in an administrative, civil, or criminal action. In addition, EPA has not waived any rights to take enforcement action for past or future violations.

Community Fuels' compliance with this Information Request is mandatory. Failure to respond fully and truthfully may result in an enforcement action being taken in accordance with Section 309 of the CWA, 33 U.S.C. § 1319. This may include civil penalties of up to \$44,414.00 per day of noncompliance. In addition, the submission of knowingly false or misleading statements may be punished by a fine pursuant to Title 18 of the U.S. Code, or by imprisonment for not more than two years, or both.

Additionally, EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at <http://www.epa.gov>. In addition, the EPA Small Business Ombudsman may be contacted at <http://www.epa.gov/sbo>. Finally, EPA developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act, which is enclosed with this letter.

Thank you for your prompt attention to this matter. If you have any questions, please feel free to contact Pete Reich at 415-972-3052 or [reich.peter@epa.gov](mailto:reich.peter@epa.gov), or have your counsel contact Rebekah Reynolds at 415-972-3916 or [reynolds.rebekah@epa.gov](mailto:reynolds.rebekah@epa.gov).

Sincerely,



Thanne Berg, Acting Assistant Director  
Enforcement Division

Enclosures

cc: Michelle Henry, San Joaquin County



**INFORMATION REQUEST**  
Community Fuels Biodiesel Production Facility  
Port of Stockton, California

**Pursuant to Sections 311(m) and 308 of the Clean Water Act**

**INSTRUCTIONS**

Each of the following instructions applies to all of the attached Information Request items:

- A. A separate response must be made to each of the questions set forth in this Information Request.
- B. This Information Request is directed to Community Fuels, Inc. (Community Fuels), its officers, directors, and employees and its subsidiaries, divisions, facilities and their officer, directors and employees. In answering each question in this Information Request, identify all contributing sources of information.
- C. If information not known or not available to you as of the date of submission of your response should later become known or available, you must supplement the response to EPA. Moreover, should you find, at any time after the submission of your response, that any portion of the submitted information is false or misrepresents the truth, you must notify EPA as soon as possible.
- D. For each document produced in response to the questions in this Information Request, indicate on the document, or in some other reasonable manner, the number of the question(s) to which it responds.
- E. You must respond to the Information Requests on the basis of all information and documents in your possession, custody or control or in the possession, custody or control of your former or current employees, agents, servants, contractors or attorneys. Furnish such information as it is available to you, regardless of whether or not it is based on personal knowledge, and regardless of source.
- F. Any written statements in your response must be returned under an authorized signature certifying that all statements contained in the response are true and accurate to the best of the signatory's knowledge and belief.
- G. If any documents requested herein have been transferred voluntarily or involuntarily to others or have been otherwise disposed of, identify each such document, identify the person to whom it was transferred, or otherwise disposed of, describe the circumstances surrounding such transfer or other disposition, and state the date or approximate date of

such transfer or other disposition.

#### H. Confidential Business Information

The EPA regulations concerning confidentiality and treatment of business information are contained in 40 C.F.R. Part 2, Subpart B. Information may not be withheld from the Administrator or her authorized representative because it is viewed as confidential. However, when requested to do so, the Administrator is required to consider information to be confidential and to treat it accordingly, if disclosure would divulge methods or processes entitled to protection as trade secrets (33 U.S.C. §§ 1318(b) and 1321(m)(2)(D), and 18 U.S.C. § 1905), except that effluent data (as defined in 40 CFR § 2.302(a)(2)) may not be considered by EPA as confidential. *See* 40 CFR. § 2.302(e).

The EPA regulations provide that you may assert a business confidentiality claim covering part or all of any trade secret information furnished to EPA at the time such information is provided to the Agency. The manner of asserting such claims is specified in 40 CFR. § 2.203(b). In the event that a third party requests release of information covered by such claim of confidentiality or the Agency otherwise decides to make a determination as to whether or not such information is entitled to such confidential treatment, notice will be provided to the claimant prior to any release of the information. However, if no claim of confidentiality is made when information is furnished to EPA, any information submitted to the Agency may be made available to the public without prior notice.

Pursuant to 40 CFR §2.302(h) (Disclosure to Authorized Representatives), you are given notice that EPA may disclose your response to authorized representatives of EPA, including contractors and state or local agencies that have duties or responsibilities under the Clean Water Act. If you have any comments on this action, you must submit them to us within thirty (30) days of receipt of this letter.

- I. The required information must be submitted, no later than thirty (30) calendar days after receipt of this letter, to:

Mr. Pete Reich  
U.S. Environmental Protection Agency, Region IX  
75 Hawthorne St. (Mail Code ENF-3-2)  
San Francisco, CA 94105  
reich.peter@epa.gov

Any request for an extension to the time limit for responding must be in writing to Mr. Reich at the above address within thirty (30) calendar days of receipt of this letter.

- J. Include in your response a signed statement certifying that: 1) you have completed a



diligent records search; 2) you have diligently interviewed all present and former employees and other persons who may have information relevant to the information requests; 3) all information responsive to EPA's requests has been sent; and 4) the submitted information is true, correct and complete to the best of your knowledge and belief.

- K. Providing the information specified in the enclosed Information Request is mandatory. Failure to respond fully and truthfully to each and every Information Request within thirty (30) days of receipt of this letter may result in administrative or civil enforcement action by EPA pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319, which authorizes the United States to seek penalties of up to thirty-seven thousand five hundred dollars (\$44,414) per day for each day of continued non-compliance. "Non-compliance" is considered by EPA to be not only failure to respond to the Information Request but also failure to respond completely and truthfully to each question in the Information Request.
- L. The Information Request is not subject to approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. Part 35.

## **DEFINITIONS**

For the purpose of the Instructions and Information Requests set forth herein, the following definitions shall apply:

- i. The term “you” or “your” shall mean the corporate or other organizational addressee of the Request, the addressee’s officers, managers, employees, contractors, trustees, predecessors, successors, assigns, subsidiaries, and agents, including the person signing the response to this Information Request.
- ii. The term “person” as used herein includes, in the plural as well as the singular, any natural person, firm, contractor, unincorporated association, partnership, corporation, trust or governmental entity, unless the context indicates otherwise.
- iii. The term “Facility” shall mean the Community Fuels facility located at 809-C Snedeker Avenue, Stockton, California. The term “Facility” includes all tanks, secondary containment systems, pipelines, loading/unloading racks, transfer areas, drainage control areas and other equipment related to onshore bulk storage facilities operated by Community Fuels in the vicinity of the Facility.
- iv. The term “oil” shall have the same definition as that contained in Section 311(a)(1) of the Clean Water Act (“Act”), 33 U.S.C. § 1321(a)(1).
- v. The term “hazardous substances” shall have the same definition as that contained in Section 311(a)(14) of the Act, 33 U.S.C. § 1321(a)(14), including the substances listed in 40 CFR Part 116.
- vi. The terms “furnish,” “describe,” “provide” or “indicate” shall mean turning over to EPA either original or duplicate copies of the requested information in your possession, custody, or control. Where specific information has not been memorialized in any document but is nonetheless responsive to an information request, you must respond to the request with a written response. If such requested information is not in your possession, custody, or control, then indicate where such information or documents may be obtained.
- vii. The term “identify” means, with respect to a natural person, to set forth his or her full name, present or last known business address, the name of his or her employer and a description of the job responsibilities of such person.
- viii. The term “identify” means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship) to set forth its full name, address, legal form of the organization (e.g., corporation, partnership, etc.), and a brief description of its business.



ix. The term “identify” means, with respect to a document, to provide its customary business description, its date, its number if any (invoice or purchase order number), the identity of the author, addressee and/or recipient, and the substance of the subject matter.

x. The term “discharge” shall have the same definition as that contained in Section 311(a)(2) of the Act, 33 U.S.C. § 1321(a)(2), which includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

xi. As used here, “document” and “documents” shall include writings of any kind, formal or informal, whether or not wholly or partially in handwriting (included by the way of illustration and not by way of limitation), any invoice, receipt, endorsement, check, bank draft, canceled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memoranda of telephone and other conversations (including meetings, agreements and the like), diary, calendar, desk pad, scrap book, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, report, notice, message, analysis, comparison, graph, chart, interoffice or intra office communications, photo-stat or other copy of any documents, microfilm or other film record, any photograph, sound recording on any type of device, any disc or other type of memory generally associated with computers and data processing (together with the programming instructions and other written material necessary to use such disc other type of memory). The terms “document” and “documents” include (a) every copy of each document that is not an exact duplicate of a document which is produced, (b) every copy that has any writing, figure or notation, annotation or the like, (c) drafts, (d) attachments to or enclosures with any documents and (e) every document referred to in any other document.

xii. “And” as well as “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information that might otherwise be construed to be outside their scope.

xiii. The term “Natural Resources” includes land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the exclusive economic zone), any state or local government or Indian tribe, or any foreign government.

## **INFORMATION REQUEST**

You are required to provide the following information (including all supporting documents for the information) regarding the Community Fuels facility (Facility).

### **Corporate Status and Representative Information**

1. Identify the person(s) answering these questions on behalf of Community Fuels and its affiliates and other related entities, including full name, business mailing address, business telephone number and relationship to Community Fuels.
2. State the full and correct name of Community Fuels, the address, current line(s) of business, and Dun & Bradstreet Number, if any. Provide the name and address of its president and any registered agent for California, the state in which it is incorporated, and the state(s) in which it does business.
3. Identify the parent corporation(s), subsidiary(ies) and related entity(ies) of Community Fuels and American Biodiesel, Inc., if any. For each parent, subsidiary or related entity provide its address, the state in which it is incorporated, the state(s) in which it is doing business, its current line(s) of business, and its Dun & Bradstreet number, if any.

### **Facility Information**

4. State the total oil storage capacity of the Facility.
5. Describe the relationship between Community Fuels and American Biodiesel, Inc., and the Facility.
6. Provide the name, address and telephone number(s) for each owner, operator and person in charge of the Facility during the last five years. For each owner, operator and person in charge, also specify the time period(s) that they owned, operated or were in charge of the Facility.
7. Provide the date the Facility first began operation. Provide a list of all containers, including tanks, drums and totes, and provide the date of when each container was put into service. Also provide the specific date(s) that the three 250,000-gallon aboveground storage tanks were installed and put into service.



## **SPCC Plan and Implementation**

8. Provide a response to each of the violations listed in the letter, indicating if Community Fuels admits or contests the violation.
  - i. If the Company admits the violation, indicate if the Facility is presently in compliance with the cited requirement.
    1. If the Facility is presently in compliance with the cited requirement, include the following information:
      - a. A description of what activities the Facility undertook to come into compliance and supporting documentation;
      - b. The date on which the Facility came into compliance; and
      - c. The cost(s) incurred by the Facility to come into compliance.
    2. If the Facility is presently not in compliance with the cited requirement, include the following information:
      - a. Indicate what actions the Facility will undertake in order to come into compliance and what supporting documentation will be submitted to EPA;
      - b. Provide an estimated schedule by which compliance will be achieved;
      - c. Estimate all of the costs associated with coming into full compliance.
  - ii. If the Company contests the violation, provide the basis and supporting documentation for each such assertion.







## U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

### Small Business Programs

[www.epa.gov/smallbusiness](http://www.epa.gov/smallbusiness)  
EPA's Office of Small Business Programs (OSBP) advocates and fosters opportunities for direct and indirect partnerships, contracts, and sub-agreements for small businesses and socio-economically disadvantaged businesses.

### EPA's Asbestos Small Business Ombudsman

[www.epa.gov/sbo](http://www.epa.gov/sbo) or 1-800-368-5888  
The EPA Asbestos and Small Business Ombudsman (ASBO) serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

### EPA's Compliance Assistance Homepage

[www2.epa.gov/compliance](http://www2.epa.gov/compliance)  
This page is a gateway industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

### EPA's Compliance Assistance Centers

[www.assistancecenters.net](http://www.assistancecenters.net)  
EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

### Agriculture

[www.epa.gov/agriculture/](http://www.epa.gov/agriculture/)

### Automotive Recycling

[www.ecarcenter.org](http://www.ecarcenter.org)

### Automotive Service and Repair

[ccar-greenlink.org/](http://ccar-greenlink.org/) or 1-888-GRN-LINK

### Chemical Manufacturing

[www.chemalliance.org](http://www.chemalliance.org)

### Construction

[www.cicacenter.org](http://www.cicacenter.org) or 1-734-995-4911

### Education

[www.campuserc.org](http://www.campuserc.org)

### Food Processing

[www.fpeac.org](http://www.fpeac.org)

### Healthcare

[www.hercenter.org](http://www.hercenter.org)

### Local Government

[www.lgean.org](http://www.lgean.org)

### Metal Finishing

[www.nmfrc.org](http://www.nmfrc.org)

### Paints and Coatings

[www.paintcenter.org](http://www.paintcenter.org)

### Printing

[www.pneac.org](http://www.pneac.org)

### Ports

[www.portcompliance.org](http://www.portcompliance.org)

### Transportation

[www.tercenter.org](http://www.tercenter.org)

### U.S. Border Compliance and Import/Export Issues

[www.bordercenter.org](http://www.bordercenter.org)

### EPA Hotlines, Helplines and Clearinghouses

[www2.epa.gov/home/epa-hotlines](http://www2.epa.gov/home/epa-hotlines)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

### Clean Air Technology Center (CATC) Info-line

[www.epa.gov/ttn/catc](http://www.epa.gov/ttn/catc) or 1-919-541-0800

### Superfund, TRI, EPCRA, RMP and Oil Information Center

[www.epa.gov/superfund/contacts/infocenter/index.htm](http://www.epa.gov/superfund/contacts/infocenter/index.htm) or 1-800-424-9346

### EPA Imported Vehicles and Engines Public Helpline

[www.epa.gov/otaq/imports](http://www.epa.gov/otaq/imports) or 734-214-4100

### National Pesticide Information Center

[www.npic.orst.edu/](http://www.npic.orst.edu/) or 1-800-858-7378

### National Response Center

**Hotline** to report oil and hazardous substance spills - [www.nrc.uscg.mil](http://www.nrc.uscg.mil) or 1-800-424-8802

### Pollution Prevention Information Clearinghouse (PPIC) -

[www.epa.gov/opptintr/ppic](http://www.epa.gov/opptintr/ppic) or 1-202-566-0799

### Safe Drinking Water Hotline -

[www.epa.gov/drink/hotline/index.cfm](http://www.epa.gov/drink/hotline/index.cfm) or 1-800-426-4791



### Stratospheric Ozone Protection Hotline

[www.epa.gov/ozone/comments.htm](http://www.epa.gov/ozone/comments.htm) or 1-800-296-1996

### Toxic Substances Control Act (TSCA) Hotline

[tsc-hotline@epa.gov](mailto:tsc-hotline@epa.gov) or 1-202-554-1404

### Small Entity Compliance Guides

<http://www.epa.gov/sbrefa/compliance-guides.html>

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 604 of the Regulatory Flexibility Act (RFA).

### Regional Small Business Liaisons

<http://www.epa.gov/sbo/rsbl.htm>

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

### State Resource Locators

[www.envcap.org/statetools](http://www.envcap.org/statetools)

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

### State Small Business Environmental Assistance Programs (SBEAPs)

[www.epa.gov/sbo/507program.htm](http://www.epa.gov/sbo/507program.htm)

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.

### EPA's Tribal Portal

[www.epa.gov/tribalportal/](http://www.epa.gov/tribalportal/)

The Portal provides access to information on environmental issues, laws, and resources related to federally recognized tribes.

### EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

### EPA's Small Business Compliance Policy

[www2.epa.gov/enforcement/small-businesses-and-enforcement](http://www2.epa.gov/enforcement/small-businesses-and-enforcement)

This Policy offers small businesses special incentives to come into compliance voluntarily.

### EPA's Audit Policy

[www2.epa.gov/compliance/epas-audit-policy](http://www2.epa.gov/compliance/epas-audit-policy)

The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

### Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

### Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

*EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.*